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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1951.

FRED J. LAUCHLI, Trustee of Hartman Corporation of America (a Corp.), Bankrupt,
Petitioner,
vs.
MILTON HARTMAN, JANE I. HARTMAN, DuVOLL CORPORATION and MILTON HARTMAN CORPORATION (Now Named HARTMAN CORP.),
Respondents.

No. 739

RESPONDENTS' BRIEF AND SUGGESTIONS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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I.

OPINION OF THE COURT BELOW.

The proceedings in the United States Court of Appeals for the Eighth Circuit, including the original opinion and the per curiam opinion entered upon overruling Petitioner's petition for a rehearing, are included in the transcript of the record heretofore filed herein (T. pp. 3 to 61).

II.

PRELIMINARY STATEMENT.

The petition for the issuance of a writ of certiorari should be denied for the reasons that it appears from a reading of the record, particularly the opinion of the Court of Appeals and the later per curiam opinion, that the errors charged by the Petitioners do not exist.

a. The Court of Appeals did not decide an important question of law contrary to the provisions of Sec. 1652 (Tit. 28, U. S. C. A.), or contrary to Section 490.640, R. S. Mo. 1949, but rather determined the sufficiency of the proof concerning the disputed signatures in accord with such law and in accord with the prior opinion of this Court in the case of U. S. v. U. S. Gypsum Company, 333 U. S. 364, 395.

b. The Court of Appeals did not disregard substantial evidence in support of the District Court's finding that Jane I. Hartman had executed Exhibit "B," but rather they found that such evidence was not and is not to be found in the record.

c. The Court of Appeals based its determination of the question as to whether a contract had ever been entered into upon well known fundamental principles of law, without indulging in any presumptions for or against either side.

III.

ARGUMENT.

A. It is insisted that the Court of Appeals, in its opinion, ignored the evidence presented to the District Court containing admittedly genuine signatures of Jane I. Hartman and signatures admittedly written by Milton Hartman. Petitioners have obviously overlooked that part of the opinion (T. p. 22) in which it is said that:

> "The specimen 'multilith' of Exhibit B, containing the genuine signature of Milton Hartman and the disputed signature of Jane I. Hartman, is included in the record here and the handwriting of the two names, written close to each other, shows similarity in the slant of the letters, their conformation, spacing and pressures. Certainly there is no such obvious dissimilarity as to suggest that they were not written by the same hand. **Mrs. Hartman was asked to sign her name a number of times, which she did, and other examples of her handwriting were introduced.**" (Emphasis supplied.)

Next followed, in the opinion, the part quoted on page 21 of Petitioner's Brief in which the Court found that no handwriting expert was called. Thereafter the Court went on to state the following on page 23 of the Transcript:

> "There is no indication in the record how the trial court reached its finding that Jane signed the document. There was no circumstantial evidence tending to show she signed. The surrounding circumstances shown are consistent with Mr. Hartman's statement as to how, where, and when he signed the name of his wife. The record shows simply the bare finding, which we think is clearly without evidentiary support. However disbelieving or suspicious of the testimony of the Hartmans the court may have been, the burden of

proving that Jane signed was on the plaintiff. The plaintiff simply failed to sustain that burden.

"Attempting to sustain the decree, the appellee stresses the Missouri statute, Sec. 1915, R. S. Mo. R. S. A. (id., R. S. Mo. 1949, Sec. 490.640), which provides:

" 'Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses, and such writings and the evidence of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.'

"But the record fails to show that any comparison of handwritings was made by witnesses or that the court's finding was based on any such comparison. Certainly the finding could not have rested on comparison of the handwriting in Exhibit B which is before this court. Since the testimony of the Hartmans was that Mrs. Hartman had not signed the Exhibit, and since there was no proof that she had signed it, the finding that she had in fact signed her name to the Exhibit was clearly wrong. **United States v. U. S. Gypsum Company**, 333 U. S. 364, 395. We find no Missouri decision which supports such a finding under such circumstances.

"Inasmuch as the decree appealed from was rested directly upon the finding that Jane signed Exhibit B, it necessarily follows as a result of the avoidance of that finding that the decree must be reversed."

From the opinion it appears affirmatively that all of the evidence on the question was fully considered by the Court of Appeals upon which it found that "The plaintiff simply failed to sustain that burden."

B. The trial Court was clearly in error. The Court of Appeals treated the finding of the trial Court with extreme

thoroughness and kindness. The plain truth of the matter is that the finding of the District Court is based solely upon the presumption that Mr. and Mrs. Hartman both swore falsely, while the only specimens of the handwriting before the Court of Appeals sustains the truth of their testimony that she did not sign the document.

The claim that the "Court of Appeals disregarded . . . substantial evidence" on this point is clearly contrary to the record. Hence, there is nothing before this Court which could justify the issuance of the writ prayed for.

C. Petitioners also complain, in one single italicized sentence (Brief p. 26), that the record did not sustain the Court of Appeals in its finding that, under the law, the District Court erred in attempting to enforce a contract which did not exist. Regardless of the question as to whether either or both of the Hartmans had signed Exhibit B, there was no legal basis to warrant a determination that the offer of the Hartmans to transfer the real estate in question was ever accepted by the creditors of the Hartman Corporation. It never did become a binding or enforceable obligation.

The determination of this point by the Court of Appeals (T. p. 25) is as follows:

> "In this case the creditors did not consent to extend the time for payment of their debts during operation of the company in the proposed manner. The conditions on which it was promised that the property would be transferred to a trustee never arose. There was no contract to convey that ever became binding upon the signers of Exhibit B.
>
> "The theories upon which it was contended that it should be deduced that the Hartmans made a proposal to the representatives of the six creditors called a creditors' committee and that those gentlemen had done or refrained from doing something whereby an

acceptance of the proposal was accomplished so that an absolute contract came into existence binding the Hartmans to convey the real estate 'within a reasonable time' were all without merit. None of the members of the so-called creditors' committee nor the committee itself was in any position to insure continuation of company operations free from creditor interference for a single day. As shown by the evidence, some creditors actually brought suits against the company and all the others remained free to sue. The attempt to dissociate the offers to convey the real estate from the granting of extension of time by the creditors simply contorts the picture of the situation and of what occurred. There was no hope and no thought of trying to work the company out of its condition without forbearance agreed to by the creditors.

"The finding and conclusion that there was a contract entered into between the Hartmans and 'the creditors of the Hartman Corporation' for the conveyance of the real estate, as pleaded in the complaint, was not supported by evidence, was clearly erroneous and necessitates reversal."

Hence, something was still to be done by the creditors before the Petitioner could enforce Exhibit B against the Respondents. The efforts of the Creditors Committee and the offer contained in the disputed document were put forth in the firm belief of all concerned that an extension of time was the only alternative to early ruinous liquidation of the company. Each creditor was required to sign Exhibit C, a "Forbearance Agreement" (T. p. 14). One hundred thirty-six creditors, holding claims of $142,124.95, did not sign. The company was not given forbearance. It was put into reorganization, and, later, into bankruptcy.

Hence, there never was a contract. The Court of Appeals could not be in error about this and there is nothing to justify a review of its opinion and decision by this Court.

CONCLUSION.

We respectfully suggest that the petition for a writ of certiorari should be denied as it seems to be wholly without merit.

Respectfully submitted,

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